

REMARKS

Claims 1-9 were cancelled. Claim 21 was withdrawn improperly, for the reasons presented below. No claims are amended. Reconsideration and allowance of claims 10-21 is requested in light of the following remarks.

Allowable Subject Matter

Claims 11, 12 and 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims as previously indicated. At this time, the applicant wishes to retain these claims in their present form so that the comments presented below may be fully considered.

Inadequate and Improper Restriction Requirement

Claim 21 was presented in the applicant's previous response. Claims 10-20 and claim 21 have been alleged to be directed at patentably distinct species, and since claims 10-20 have already been argued on the merits, they were considered to be constructively elected in accordance with MPEP 821.03. The applicant traverses this restriction requirement, for the following reasons.

It is alleged that "[t]his application contains claims directed to the following patentably distinct species of the claimed invention[.]" The words of claims 10 and 21 are then copied. Later, it is stated that "[n]ewly submitted claim 21 [is] directed to an invention that is independent or distinct from the invention originally claimed for the reasons delineated above." However, no reasons are actually "delineated above" as to why claim 21 is considered to be independent or distinct from claim 10. According to the MPEP, this mere statement of conclusion amounts to an inadequate restriction requirement.

The particular reasons relied on by the examiner for holding that the inventions as claimed are either *independent or distinct* should be *concisely stated*. MPEP 816, emphasis added. *A mere statement of conclusion is inadequate*. MPEP 816, emphasis added. *The reasons* upon which the conclusion is based *should be given*. MPEP 816, emphasis added.

Furthermore, restriction between claim 10 and claim 21 is improper. Where there is *no disclosure* of relationship between species, they are independent inventions and election of one invention is mandatory. MPEP 808.01(a), emphasis added. However, the applicant's disclosure is replete with evidence that there is a relationship between the species of claims

10 and 21. For example, FIGs. 2-8 of the disclosure are all illustrative of the same embodiment of the invention, namely, the embodiment illustrated in FIGs. 2 and 3 (see, e.g., page 4, lines 12-17).

Furthermore, in order for claims to be restricted to different species, they must be mutually exclusive. MPEP 806.04(f). The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which *under the disclosure* are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. MPEP 806.04(f), emphasis added. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of the species. MPEP 806.04(f).

Since all the Figures in the applicant's disclosure are illustrative of a single species (i.e., the species of FIG. 2 and 3 and the exemplary processes used to manufacture the species, as illustrated in FIGs. 4-8), there can be no serious argument that the features recited in claims 10 and 21 recite mutually exclusive characteristics. Thus, the withdrawal of the species of claim 21 as being independent or distinct from the species of claim 10 is improper.

For the reasons recited above, the applicant requests either that claim 21 be re-entered in the case, that an adequate restriction requirement be given so that the applicant may present reasons that traverse the requirement, or that the restriction requirement be made final in a subsequent Advisory Action so that the applicant may petition the Commissioner to review the restriction requirement.

Claim Rejections – 35 U.S.C. 102

Claims 10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,451,708 to Ha ("Ha"). The applicant disagrees.

Claim 10 recites, *inter alia*, forming a gate insulating layer and a gate conductive layer on a substrate, forming a word line capping layer and a gate capping layer on the gate conductive layer, and patterning the word line capping layer, the gate capping layer, and the gate conductive layer to form a plurality of word line patterns in the cell array region and at least one gate pattern in the peripheral region.

It is alleged that Ha discloses a gate insulating layer 106, a gate conductive layer 108, a word line capping layer 110, and a gate capping layer. However, there is still **NO INDICATION**, either in the current final office action or the previous non-final office action, as to what element of Ha is considered to be the recited gate capping layer (emphasis added).

If Ha is alleged to teach such a feature, the examiner is kindly asked to identify the feature by FIGURE and numerical reference number.

Ha FIG. 2A shows that the alleged word line patterns and the alleged at least one gate pattern are composed only of the alleged gate insulating layer 106, the alleged gate conductive layer 108, and the alleged word line capping layer 110. In other words, Ha FIG. 2 does not show a gate capping layer, nor does it show patterning the gate capping layer to form a plurality of word line patterns in the cell array region and at least one gate pattern in the peripheral region.

The applicant has been invited to compare the instant figures with Ha's FIGs. 2A-2F, where the "gate capping patterning" is allegedly readily apparent to one skilled in the art.

Since we are comparing figures, the applicant would also invite the examiner to examine applicant's FIGs. 5 and 6. FIG. 5 shows a gate capping layer 130, which becomes the gate capping layer pattern 134-1 in FIG. 6. To the contrary, Ha's FIG. 2A shows that the topmost layer of the pattern in the peripheral circuit area is layer 110, which was already alleged to be the recited word line capping layer. Thus, Ha exhibits a complete absence of any teaching that would indicate that a gate capping layer exists in addition to the alleged word line capping layer 110.

For the above reasons, the applicant reiterates that Ha fails to disclose a gate capping layer, nor does it disclose patterning the gate capping layer to form a plurality of word line patterns in the cell array region and at least one gate pattern in the peripheral region.

Consequently, Ha does not anticipate claim 10 because it fails to show the *identical invention* in as complete detail as contained in the claim. MPEP 2131, emphasis added.

Claim 15 depends from claim 10, and inherently contains the features of claim 10. Consequently, Ha does not anticipate claim 10 because it fails to show the identical invention in as complete detail as is inherently contained in the claim. MPEP 2131.

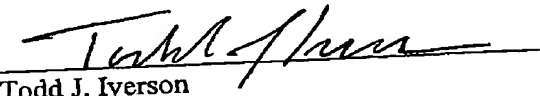
Claims 10 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Ha. The rebuttal presented by the applicant in the above paragraphs regarding the 35 U.S.C. 102(b) rejection under Ha is equally applicable to these rejections.

Conclusion

For the foregoing reasons, reconsideration and allowance of claims 10-21 is requested. Please telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.


Todd J. Iverson
Reg. No. 53,057

MARGER JOHNSON & McCOLLOM, P.C.
210 SW Morrison Street, Suite 400
Portland, OR 97204
503-222-3613
Customer No. 20575

I hereby certify that this correspondence
is being transmitted to the U.S. Patent and
Trademark Office via facsimile number
(571) 273-8300 on November 29, 2005.


Li Mei Vermilya